

**REMARKS**

This application has been carefully reviewed in view of the current Final Office Action. Reconsideration is respectfully requested in view of the following:

**INTERVIEW SUMMARY**

The undersigned conducted a telephonic interview with Examiner Jason Dunham and Primary Examiner Jeff Smith on July 14, 2005. The arguments presented below were briefly verbally presented during that interview, and Mr. Smith asked that the arguments be placed in this Request for Reconsideration. Mr. Smith indicated that the Kenner reference was useful from the perspective that a site might be unable to carry out a download due to congestion. The undersigned pointed out that the claim language called for the site not be enabled to download downloadable digital data. Mr. Smith further indicated that a link between the physical server and the web site should be clear.

Applicants appreciate the professionalism and courtesies extended by Mr. Dunham and Mr. Smith during the interview. Applicants invited, and reiterate the invitation here, the Examiners to contact the undersigned by telephone should anything beyond the current submission be required to secure allowance of the present application.

**ARGUMENTS**

The undersigned respectfully submits that the claims as presented are neither anticipated nor obviated by the art of record.

Regarding the Digital River reference of record, this reference was discussed in great detail in the prior response. The current Final Office Action admits that this reference "does not expressly disclose a method wherein the first network server presents the consumer with the opportunity to purchase either physical media or downloadable digital data, but if the transaction involves purchase of downloadable digital [data] that cannot be delivered by the first network server, then the consumer is linked to the second network server in order to carry out the transaction" (Page 3, Third Bullet Point). Applicants agree.

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The Office Action asserts at the passage spanning pages 3 and 4, that "Kenner discloses a method comprising:

- wherein the first server is enabled to sell physical media, but is not enabled to download downloadable digital data;
- automatically linking the consumer to a second network server that hosts a second web site on the electronic network in response to the command;
- transmitting a second page from the second network server to the consumer over the electronic network; and
- wherein the second network server is capable of supplying the downloadable data, the second page including information concerning how to complete the transaction for the selected purchasable content, and such that the consumer may complete the transaction for the selected purchasable content from the second network server, whereby, the first network server presents the consumer with the opportunity to purchase either physical media or downloadable digital data, but if the transaction involves purchase of downloadable digital data that cannot be delivered by the first network server, then the consumer is linked to the second network server in order to carry out the transaction. (Kenner: Page 6, lines 53-63)"

The undersigned respectfully submits that the Kenner reference of record fails to provide the disclosure asserted in the Office Action. The teachings of the Kenner reference, and certain (but not all) of the claim distinctions can be summarized as follows:

- The problem addressed by Kenner is that "mirror sites" used for download of information from the Internet are not used efficiently, and mirror sites are not located based on demand. Due to the basic nature of Internet, packets may be lost or delayed, and no mechanism exists to optimize selection of a mirror site to minimize this possibility and optimize throughput. (Background generally)
- Kenner defines a "mirror site" as a site containing information identical to that of the original site (Col. 4, lines 33-34).

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- The claims require that one web site be maintained on a first network server that can offer both physical product and downloadable product for sale, and that site can deliver physical product but is not "enabled" to deliver product by download. A second web site is maintained on a second network server and can deliver product by download.
- Thus, Kenner doesn't fairly meet or suggest the claim limitation of transferring from a site with only physical delivery capability to one with download capability – since all sites of Kenner are mirror sites. From Kenner's own definition, mirror sites contain identical information. Clearly, Applicant's first site has no download capability and thus at least fails to constitute a mirror (per Kenner's definition).
- Kenner only selects an optimum deliver site for a user (Col. 1, lines 7-16), there is no selection of or transfer to a second site based upon one site's enabled abilities.
- In Kenner, selection of a particular site is done based on download performance (Col. 6, lines 5-19).
- In Kenner, selection of a particular site is made using configuration utility software resident on the user's computer (Col. 6, lines 31-35), not based upon a site's enabled abilities. The operation of the configuration utility is described at Col. 9, line 45 – Col. 13, line 59.

In view of these actual teachings of Kenner, consider at least the following passages from claim 1 (as an illustration):

*"wherein the first server is enabled to sell physical media, but is not enabled to download downloadable digital data"* - This is clearly not disclosed, since each site is a "mirror" of the other, they should be "enabled" to have identical capabilities.

*"automatically linking the consumer to a second network server that hosts a second web site in response to the command"* - The only similarity is that the user is sent to another web site, however, that site is a mirror site having presumably identical capabilities and the purpose of the redirection is to optimize selection of a mirror site, and the decision to redirect is based accordingly.

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Kenner fails to disclose these claim features and does not suggest them. Kenner is used for a completely different purpose and has no teaching that doesn't involve using mirror sites and redirection to optimize use of the best mirror site for a particular customer. Accordingly, it is submitted that the claims distinguish over the cited art as presented. Reconsideration and allowance is respectfully requested.

Regarding the request of Primary Examiner Jeff Smith, the undersigned has inspected the claims and believes that the connection between the web site and a specific server hosting the web site is clear and explicit. It would seem that no amendment in this regard is necessary, but the undersigned reiterates the invitation for a telephone call if further clarification of this relationship is believed appropriate.

The claims remain substantially unamended, except to correct a minor error in which "physical" was inadvertently used instead of "digital". This error is believed to be obvious and of such a minor nature that Examiner Dunham even omitted the erroneous word in summarizing the language of the claims (e.g., last line of page 3). Clearly the intent was understood. Accordingly, entry of this minor amendment to the independent claims is appropriate and requires no further search or consideration.

Respectfully submitted,



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